

**STATE OF SOUTH DAKOTA
DEPARTMENT OF SOCIAL SERVICES
DIVISION OF MEDICAL SERVICES**

**Consultant Contract
For Consultant Services
Between**

State of South Dakota
Department of Social Services
DIVISION OF MEDICAL SERVICES
700 Governors Drive
Pierre, SD 57501-2291

Referred to as Consultant

Referred to as State

The State hereby enters into a contract for consultant services with the Consultant. While performing services hereunder, Consultant is an independent contractor and not an officer, agent, or employee of the State of South Dakota.

1. CONSULTANT'S South Dakota Vendor Number is .
2. PERIOD OF PERFORMANCE:
This Agreement shall be effective as of March 1, 2013 and shall end on May 31, 2014, unless sooner terminated pursuant to the terms hereof. The terms of this Consultant contract shall be for a period of fourteen months, with the option to renew for two (2) additional years, in one (1) year increments at the discretion of the State.
3. WILL THE CONSULTANT USE STATE EQUIPMENT, SUPPLIES, OR FACILITIES?
No.
4. PROVISIONS:
 - A. The Purpose of this Consultant contract:
The contract is created to provide a file of validated providers to facilitate streamlined provider enrollment that will meet the requirements of 42 CFR Parts 424 and 455.
 - B. The Consultant agrees to perform the following services (add an attachment if needed.):
The Consultant will perform those services described in the Scope of Work, attached hereto as Section 3 of the RFP and by the reference incorporated herein.
 - C. The State agrees to:
Provide the Consultant with an export of provider data to be used in meeting the contractual requirements. In addition the State will:
 1. Make payment for services upon satisfactory completion of services and receipt of bill. Payment will be in accordance with SDCL 5-26.
 2. Will the State pay Consultant expenses as a separate item?
YES () NO (X)
If YES, expenses submitted will be reimbursed as identified in this agreement.
 3. The **TOTAL CONTRACT AMOUNT** will not exceed \$.

5. BILLING:

Consultant agrees to submit a bill for services within (30) days following the month in which services were provided. Consultant will prepare and submit a monthly bill for services. Consultant agrees to submit a final bill within 45 days of the contract end date to receive payment for completed services. If a final bill cannot be submitted in 45 days, then a written request for extension of time and explanation must be provided to the State.

6. TECHNICAL ASSISTANCE:

The State agrees to provide technical assistance regarding Department of Social Services rules, regulations and policies to the Consultant and to assist in the correction of problem areas identified by the State's monitoring activities

7. LICENSING AND STANDARD COMPLIANCE:

The Consultant agrees to comply in full with all licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance in which the service and/or care is provided for the duration of this agreement. Liability resulting from noncompliance with licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance or through the Consultant's failure to ensure the safety of all individuals served is assumed entirely by the Consultant.

8. ASSURANCE REQUIREMENTS:

The Consultant agrees to abide by all applicable provisions of the following assurances: Lobbying Activity, Debarment and Suspension, Drug-Free Workplace, Executive Order 11246 Equal Employment Opportunity, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, Drug Abuse Office and Treatment Act of 1972, Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, Pro-Children Act of 1994, Hatch Act, Health Insurance Portability and Accountability Act (HIPAA) of 1996, Charitable Choice Provisions and Regulations, and American Recovery and Reinvestment Act of 2009 as applicable.

9. RETENTION AND INSPECTION OF RECORDS:

The Consultant agrees to maintain or supervise the maintenance of records necessary for the proper and efficient operation of the program, including records and documents regarding applications, determination of eligibility (when applicable), the provision of services, administrative costs, statistical, fiscal, other records, and information necessary for reporting and accountability required by the State. The Consultant shall retain such records for six years following termination of this agreement. If such records are under pending audit, the Consultant agrees to hold such records for a longer period upon notification from the State. The State, through any authorized representative, will have access to and the right to examine and copy all records, books, papers or documents related to services rendered under this Agreement. State Proprietary Information retained in Consultant's secondary and backup systems will remain fully subject to the obligations of confidentiality stated herein until such information is erased or destroyed in accordance with Consultant's established record retention policies.

All payments to the Consultant by the State are subject to site review and audit as prescribed and carried out by the State. Any over payment of this contract shall be returned to the State within thirty days after written notification to the Consultant.

10. IT STANDARDS:

Consultant warrants that the software and hardware developed or purchased for the state will be in compliance with the BIT Standards including but not limited to the standards for security, file naming conventions, executable module names, Job Control Language, systems software, and systems software release levels, temporary work areas, executable program size, forms management, network access, tape management, hosting requirements, administrative controls, and job stream procedures prior to the installation and acceptance of final project. BIT standards can be found at <http://bit.sd.gov/standards/>.

11. SECURITY:

The Contractor shall take all actions necessary to protect state information from exploits, inappropriate alterations, access or release, and malicious actor attacks. By signing this contract the Contractor warrants that:

- A. The Contractor will fully support and maintain the Contractor's application on platforms and code bases (including but not limited to: operating systems, hypervisors, web presentation layers, communication protocols, security products, report writers, and any other technologies on which the application depends) that are still being supported, maintained, and patched by the applicable third parties owning them. The Contractor may not withhold support from the state for this application nor charge the state additional fees as a result of the state moving the Contractor's application to a new release of third party technology if:

- i. The previous version of the third party code base or platform is no longer being maintained, patched, and supported; and
- ii. The new version to which the state moved the application is actively maintained, patched, and supported.

If there are multiple versions of the applicable code base or platform(s) supported by the third party in question, the Contractor may limit their support and maintenance to any one or all of the applicable third party code bases or platforms.

- B. If a code base or platform on which the Contractor's application depends is no longer supported, maintained, or patched by a qualified third party, the Contractor commits to move its application from that code base and/or platform to one that is supported, maintained, and patched after the State has performed a risk assessment using industry standard tools and methods. Based on that assessment the Contractor will fix or mitigate the risk based on the following schedule: high risk, within 7 days, medium risk within 14 days, low risk, within 30 days. Failure on the part of the Contractor to work in good faith with the State toward a timely move to supported, maintained, and patched technology shall constitute a breach of this contract and shall allow the State to cancel this contract without penalty.
- C. Assistance will be provided to the State of South Dakota by the Contractor in performing an investigation to determine the nature of any security issues that are discovered or are reasonably suspected after acceptance.

12. MALICIOUS CODE:

The Contractor covenants that the Licensed Software does not contain any code that does not support a software requirement; that it will not insert into the Licensed Software or any media on which the Licensed Software is delivered any virus, rouge program, time bomb, worm, Trojan Horse, back doors, Easter eggs or other malicious or intentionally destructive code; it will use commercially reasonable efforts consistent with industry standards to scan for and remove any Malicious Code from the Licensed Software before installation; and it will resolve all known security issues.

In the event any Malicious Code is discovered in the Licensed Software as delivered by the Contractor to the State under this contract, the Contractor shall provide the State at no charge with a clean copy of the applicable Licensed Software that does not contain such Malicious Code or otherwise correct the affected portion of the services provided to the State under this contract. The remedies in this paragraph are in addition to such other and additional remedies as the State may have at law equity or otherwise.

13. DISASTER RECOVERY:

The Contractor will maintain a disaster recovery plan (the "Disaster Recovery Plan") with respect to the services provided to the State. For purposes of this Agreement, a "Disaster" shall mean any unplanned interruption of the operation of or inaccessibility to the Contractor's service in which the Contractor, using reasonable judgment, requires relocation of processing to a recovery location. The Contractor shall notify the State as soon as possible after the Contractor deems a service outage to be a Disaster. The Contractor shall move the processing of the State's services to a recovery location as expeditiously as possible and shall coordinate the cut-over. During a disaster, optional or on-request services shall be provided by the Contractor only to the extent adequate capacity exists at the recovery location and only after stabilizing the provision of base services.

14. AUDIT:

Allow State, at Consultant's expense, a security audit and vulnerability assessment to provide third party verification of Consultant's IT security safeguards for the system and its data. The State can request to review independent audit reports that document the system's security posture. This security audit and vulnerability assessment must come from a third party source.

15. BROWSER:

The Contractor agrees to provide compatibility access to the current system version through Safari, Firefox and Internet Explorer browsers.

16. HOST STAFF:

The Contractor will ensure that employees or agents who perform work under this Agreement have read, understood, and received appropriate instruction as to how to comply with the security provisions of this Agreement and have undergone all background screenings, and possess all qualifications required by the State prior to being granted access to source code, State data, or facilities which house State systems.

17. DENIAL OF ACCESS OR REMOVAL OF AN APPLICATION FROM PRODUCTION

During the life of this contract the application can be denied access to or removed from the production system at BIT's discretion. The reasons for the denial of access or removal of the application from the production system can include, but are not limited to, security, functionality, unsupported third party technologies, or excessive resource consumption. At the discretion of the State any contractual payments may be suspended while the application is denied access to or removed from the production system if the problem is caused by the Vendor's actions or inactions. Access to the production system and any updates to the production system will be made only with BIT's prior approval. It is expected that any fixes will be tested on the test system provided by the Vendor as stated in the RFP and not on the production system. It is expected that the Vendor shall provide BIT with proof of the fix proposed before BIT provides access to the production system. The certification by BIT of the fix on the test system does not guarantee the Vendor access to the production system. BIT shall sign a non-disclosure agreement with the Vendor if revealing its fix will put the Vendor's intellectual property at risk. If the Vendor is unable to produce the project deliverables due to the Vendor actions or inactions within thirty (30) days of the application's denial of access or removal from the production system and the change management process is not used to alter the project schedule or deliverables then at the State's discretion the contract may be terminated and a refund made by the Vendor to the State of any contractual payments made to the Vendor by the State.

18. WORK PRODUCT:

Consultant hereby acknowledges and agrees that all reports, plans, specifications, technical data, drawings, software system programs and documentation, procedures, files, operating instructions and procedures, source code(s) and documentation, included those necessary to upgrade and maintain the software program, State Proprietary Information, State Data, End User Data, Personal Health Information, and all information contained therein provided to the State by the Consultant in connection with its performance of service under this Contract shall belong to and is the property of the State and will not be used in any way by the Consultant without the written consent of the State. Paper, reports, forms software programs, source code(s) and other materials which are a part of the work under this Contract will not be copyrighted without written approval of the State. Consultant agrees to return the primary work product and deliverables produced under this Contract and all information received from the State to the State's custody, upon written request at the end of the term of this contract, unless otherwise agreed in a writing signed by both parties; provided, however, Consultant will not be obligated to return information contained in Consultant's secondary and backup systems.

19. TERMINATION:

This contract may be terminated by the State upon thirty (30) days written notice, and may be terminated by the State for cause at any time, with or without notice. This contract may be terminated by the Contractor upon one hundred and eighty (180) days written notice. Upon termination of this agreement, all accounts and payments shall be processed according to financial arrangements set forth herein for services rendered to date of termination.

20. FUNDING:

This Contract depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of the law or federal funds reduction, this Contract will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

21. AMENDMENTS:

This Contract may not be assigned without the express prior written consent of the State. This Contract may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto. Automatic upgrades to any software used by the Contractor to provide any services that simply improve the speed, efficiency, reliability, or availability of existing services and do not alter or add functionality and not considered "changes to the Services" and such upgrades will be implemented by the Contractor on a schedule no less favorable than that provided by the Contractor to any other customer receiving comparable levels of service.

22. CONTROLLING LAW:

This Contract shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

23. SUPERCESSION:

All other prior discussions, communications and representations concerning the subject matter of this Contract are superseded by the terms of this Contract, and except as specifically provided herein, this Contract constitutes the entire agreement with respect to the subject matter hereof.

24. SEVERABILITY:

In the event that any provision of this Contract shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

25. NOTICE:

Any notice or other communication required under this Contract shall be in writing and sent to the address set forth above. Notices shall be given by and to the Division being contracted with on behalf of the State, and by the Consultant, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

26. SUBCONTRACTORS:

The Consultant may not use subcontractors to perform the services described herein without express prior written consent from the State. The Consultant will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Contract, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this Contract. The Consultant will cause its subcontractors, agents, and employees to comply with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance.

27. HOLD HARMLESS:

The Consultant agrees to hold harmless and indemnify the State of South Dakota, its officers, agents and employees, from and against any and all actions, suits, damages, liability or other proceedings which may arise as the result of performing services hereunder. This section does not require the Consultant to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.

28. INSURANCE:

Before beginning work under this Contract, Consultant shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Contract. The Consultant, at all times during the term of this Contract, shall obtain and maintain in force insurance coverage of the types and with the limits listed below. In the event a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, the Consultant agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Consultant shall furnish copies of insurance policies if requested by the State.

A. Commercial General Liability Insurance:

Consultant shall maintain occurrence-based commercial general liability insurance or an equivalent form with a limit of not less than \$1,000,000 for each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Contract or be no less than two times the occurrence limit.

B. Business Automobile Liability Insurance:

Consultant shall maintain business automobile liability insurance or an equivalent form with a limit of not less than \$500,000 for each accident. Such insurance shall include coverage for owned, hired, and non-owned vehicles.

C. Worker's Compensation Insurance:

Consultant shall procure and maintain Workers' Compensation and employers' liability insurance as required by South Dakota law.

D. Professional Liability Insurance:

Consultant agrees to procure and maintain professional liability insurance with a limit not less than \$1,000,000.

(Medical Health Professional shall maintain current general professional liability insurance with a limit of not less than one million dollars for each occurrence and three million dollars in the aggregate. Such insurance shall include South Dakota state employees as additional insureds in the event a claim, lawsuit, or other proceeding is filed against a state employee as a result of the services provided pursuant to this Contract. If insurance provided by Medical Health Professional is provided on a claim made basis, then Medical Health Professional shall provide "tail" coverage for a period of five years after the termination of coverage.)

29. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION:

Consultant certifies, by signing this agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by the federal government or any state or local government department or agency. Consultant further agrees that it will immediately notify the State if during the term of this Contract or its principals become subject to debarment, suspension of ineligibility from participating in transactions by the federal government, or by any state or local government department or agency.

30. CONFLICT OF INTEREST:

Consultant agrees to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal organizational conflict of interest, or personal gain.

31. REPORTING PROVISION:

Consultant agrees to report to the State any event encountered in the course of performance of this Contract which results in injury to any person or property, or which may otherwise subject Consultant, or the State of South Dakota or its officers, agents or employees to liability. Consultant shall report any such event to the State immediately upon discovery.

Consultant's obligation under this section shall only be to report the occurrence of any event to the State and to make any other report provided for by their duties or applicable law. Consultant's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications). Reporting to the State under this section shall not excuse or satisfy any obligation of Consultant to report any event to law enforcement or other entities under the requirements of any applicable law.

32. **FORCE MAJEURE:**

Notwithstanding anything in this Agreement to the contrary, Contractor shall not be liable for any delay or failure to provide the Services hereunder, if the delay or failure is caused by war, terrorist attacks, riots, civil commotion, fire, flood, earthquake or any act of God, or other causes beyond Contractor's reasonable control. Provided, however, that in order to be excused from delay or failure to perform, the Contractor must act diligently to remedy the cause of such delay or failure and must contact an authorized State officer, employee, or agent as soon as reasonably possible to explain the length and cause of the delay in performance.

33. **CONFIDENTIALITY OF INFORMATION:**

For the purpose of the sub-paragraph, "State Proprietary Information" shall include all information disclosed to the Consultant by the State. Consultant acknowledges that it shall have a duty to not disclose any State Proprietary Information to any third person for any reason without the express written permission of a State officer or employee with authority to authorize the disclosure. Consultant shall protect confidentiality of the State's information from the time of receipt to the time that such information is either returned to the State or destroyed to the extent that it cannot be recalled or reproduced. Consultant understands that this information is confidential and protected under applicable State law at SDCL 1-27-1.5, modified by SDCL 1-27-1.6, SDCL 28-1-29, SDCL 28-1-32, and SDCL 28-1-68. as applicable federal regulation and agrees to notify the State as soon as reasonably practical if unauthorized disclosure of the information occurs, either intentionally or inadvertently. The parties mutually agree that neither of them shall disclose the contents of the contract except as required by applicable law or as necessary to carry out the terms of the contract or to enforce that party's rights under this contract. Permission is hereby granted to Consultant to disclose State proprietary information, other than information about applicants, employers or clients, if reasonably necessary to carry out the purposes of this contract. Consultant acknowledges that the State and its agencies are public entities and thus are bound by South Dakota open meetings and open records laws. It is therefore not a breach of this contract for the State to take any action that the State reasonably believes is necessary to comply with the South Dakota open records or open meetings laws. If the State reasonably requires additional background checks of Consultant's personnel whose work assignments will be performed at the State's facilities or on the State's systems in the course of this contract, Consultant will assist the State in obtaining such personnel's consent to allow the State to perform such background checks.

34. AUTHORIZED SIGNATURES:

In witness hereto, the parties signify their agreement by affixing their signatures hereto.

_____ Consultant Signature	_____ Date
_____ State- DSS Division Director Kirby Stone	_____ Date
_____ State – DSS Chief Financial Officer Brenda Tidball-Zeltinger	_____ Date
_____	_____

State Agency Coding:

CFDA #	_____	_____	_____	_____
Company	_____	_____	_____	_____
Account	_____	_____	_____	_____
Center Req	_____	_____	_____	_____
Center User	_____	_____	_____	_____
Dollar Total	_____	_____	_____	_____

DSS Program Contact Person _____
Phone _____

DSS Fiscal Contact Person Patty Hanson
Phone 605 773-3586

Consultant Program Contact Person _____
Phone _____

Consultant Fiscal Contact Person _____
Phone _____

Consultant Email Address _____

SDCL 1-24A-1 states that a copy of all consulting contracts shall be filed by the State agency with the State Auditor within five days after such contract is entered into and finally approved by the contracting parties. For further information about consulting contracts, see the State Auditor's policy handbook.